

# TOWN OF DAVIE

## TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Mark Kutney, AICP, Development Services Director/ (954) 797-1101  
Prepared by David M. Abramson, Planner II

**SUBJECT:** Resolution: DA 5-3-05 / 04-438 / Lakeside Town Shops, 5700 University Drive/Generally located at the northeast corner of University Drive and Stirling Road

**AFFECTED DISTRICT:** District 2

### **TITLE OF AGENDA ITEM:**

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING A DELEGATION REQUEST TO CHANGE THE DECLARATION OF RESTRICTIVE COVENANTS FOR LAKESIDE TOWN SHOPS, AND PROVIDING AN EFFECTIVE DATE.

**REPORT IN BRIEF:** Petitioner is requesting to amend the previously approved Declaration of Restrictive Covenants that reads:

**From:** "Rezone the property to UC zoning district will allow the construction of a 275,000 square foot retail use project."

**To:** "Rezone the property to UC zoning district will allow the construction of a 275,000 square foot retail use project, and a 6,200 square foot bank."

The Petitioner is requesting to amend the Declaration of Restrictive Covenants to reflect the new level of development on this property. This request is directly associated to Master Site Plan Application (MSP 2-1-04) Lakeside Town Shops, Site Plan Application (SP 11-2-04) Wachovia Bank, and (DG 10-3-04) Lakeside Town Shops.

Staff finds that the proposed amendment is consistent with the existing and proposed use of the subject site. In addition, the condition of approval requires off-site road improvements on 76<sup>th</sup> Street included as part of this application.

**PREVIOUS ACTIONS:** None

**CONCURRENCES:** N/A

**FISCAL IMPACT:** N/A

**RECOMMENDATION:** Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

**Attachments:** Resolution, Planning Report, Justification letter, Declaration of Restrictive Covenants, Future Land Use Map, Zoning, and Aerial Map

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING A DELEGATION REQUEST TO CHANGE THE DECLARATION OF RESTRICTIVE COVENANTS FOR LAKESIDE TOWN SHOPS, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the owners desire to revise the Declaration of Restrictive Covenants associated with Lakeside Town Shops; and

WHEREAS, the revision to the approved Declaration of Restrictive Covenants is consistent with the plat note amendment allowing bank use.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council of the Town of Davie does hereby approve of the proposed revision to the Declaration of Restrictive Covenants associated with Lakeside Town Shops. The proposed revision being specifically described on the planning report attached hereto as Exhibit "A".

SECTION 2. The developer will work with the Town of Davie Engineering Department to widen SW 76th Avenue within the limits of the plat or provide a bond for the cost of the necessary road widening improvements.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.

## Exhibit 1 - (Justification Letter)

### Exhibit "A"

#### **JUSTIFICATION**

**Delegation Request to Amend the Declaration of Restrictive Covenants for  
Lakeside Town Shops  
Wolf Family Plat (067-MP-98)**

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The rezoning for the Lakeside Town Shops project, located on the northeast corner of University Drive and Stirling Road in the Town of Davie was approved by the Town of Davie Town Council on June 16, 2004 with the Declaration of Restrictive Covenants restricting certain uses within the UC, Urban Commercial zoning. A plat note amendment for the "Wolf Family Plat" to allow for a proposed bank use has been submitted to the Town for approval. Therefore Item 2 on Page 2 of the approved Declaration of Restrictive Covenants which reads as follows;

"Rezone the property to UC zoning district will allow the construction of a 275,000 square foot retail use project."

is modified to read as follows:

"Rezone the property to UC zoning district will allow the construction of a 275,000 square foot retail use project, and a 6,200 square foot bank use."

The proposed modification to the approved Declaration of Restrictive Covenants does not change any of the restricted uses. This request to amend the Declaration of Restrictive Covenants is necessary only to provide consistency with the plat note amendment allowing for a bank use.

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## Exhibit 2 – (Declaration of Restrictive Covenants)

Return to: (enclose self-addressed stamped envelope)

**Name:** Hope W. Calhoun, Esq.

**Address:**

P.O. Box 1900  
Fort Lauderdale, Florida 33302

**This Instrument Prepared by:**  
Ruden, McClosky, Smith,  
Schuster & Russell, P.A.  
200 East Broward Boulevard  
15th Floor  
Fort Lauderdale, Florida 33301

SPACE ABOVE THIS LINE FOR PROCESSING DATA

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### DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Covenant") made this \_\_\_\_ day of \_\_\_\_\_, 2005 by LAKESIDE TOWN SHOPS, LTD., a Florida limited partnership ("Lakeside") and TARGET CORPORATION, a Minnesota corporation ("Target"), shall be for the benefit of the Town of Davie, a political subdivision of the State of Florida, its successors and assigns, with a post office address at 6591 Orange Drive Davie, FL 33314-3399 ("Town").

#### WITNESSETH:

WHEREAS, Target and Lakeside (hereinafter collectively, "Developer") are owners of the property more particularly described in composite Exhibit "A" ("Property") and intend to construct thereupon a commercial/retail development; and

WHEREAS, in connection with the rezoning of the Property from Commerce Center District ("CC") to Urban Commercial District ("UC") zoning district the parties hereto agreed to enter into this Covenant to place certain restrictions on the development standards and use of the Property; and

WHEREAS, this Covenant shall only be binding upon the parties executing same with respect to that portion of the Property owned by each as more particularly described in Exhibits "A-1" and "A-2" attached hereto; and

WHEREAS, Developer hereby agrees to grant this Covenant to the Town and the Town agrees to accept this Covenant in order to place certain restrictions on the development of the Property upon final approval with all appeal periods having expired without an appeal having been filed of Developer's application to rezone the Property.

NOW, THEREFORE, in consideration of the promises and covenants herein contained, Developer hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, and regulations hereinafter set forth, all of which shall run with the Property and any part thereof and which shall be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

1. Recitations. The recitations set forth above are true and correct and are incorporated into this Declaration by this reference.

2. Zoning Regulations. Rezoning the Property to the UC zoning district will allow the construction of a 275,000 square foot retail use project, and a 6,200 square foot bank. Developer agrees that the following uses shall not be permitted on the Property: catering establishments, dance hall/clubs, game room/arcade, golf course, hotel/motel, mobile home sales, mortuary, motor fuel pumps, motorcycle shop, automobile dealership, pawn shop, private clubs, massage parlor, adult book store, pinball or electronic game room, an establishment that permits nude or partially nude entertainment, or so called "head shop", stand-alone bar (as that term is defined in Section 386.203(11), Florida Statutes (2003)) or lounge, residential uses, movie theatres, gambling and casinos (not including lottery ticket sales), or package stores licensed under Section 565.02(1)(a), Florida Statutes (2003).

3. Height Restrictions. Building heights (as defined in Section 12.503 of the Land Development Code) for the Property shall not exceed thirty-five (35) feet; however, non-occupied decorative architectural features shall not be subject to this restriction.

4. Outparcel Development. Development of the Property in accordance with site plan application MSP 2-1-04 will include four outparcels (as that term is presently defined in Section 12-503 of the Town of Davie Land Development Code). In accordance with variance application V-6-3-04, and the existing Section 12-33(Q)(11) of the Town of Davie Land Development Code, the width of the outparcel buildings erected on the Property, will not exceed a width of 416 linear feet (20% of the overall street frontage) of the Property along University Drive and Stirling Road.

5. Property Access. The Property shall not be developed in a manner that will permit access to Southwest 76<sup>th</sup> Avenue.

6. Equestrian Trail. Developer shall be responsible for constructing, in accordance with existing development standards, an equestrian trail along that certain portion of the Town's right-of-way abutting 76<sup>th</sup> Avenue as indicated on the approved site plan associated with the development of the Property as being reserved for same. Said equestrian trail shall be maintained by the owner of the Property upon completion of same, in a manner consistent with the Town's Code of Ordinances. Any improvements made to the equestrian trail, not related to normal maintenance shall be made after receiving written approval by the Town Administrator.

7. Amendments. This Covenant shall not be modified, amended or released as to any portion of the Property except by written instrument, executed by the then owner or owners of a

majority of the Property and approved in writing by the Town. The appropriate governmental authority of the Town shall execute a written instrument effectuating and acknowledging such modification, amendment or release. Any amendment, modification or release of this Covenant shall be recorded in the Public Records of Broward County, Florida.

8. Recording of Persons Bound. This Covenant shall be recorded in the Public Records of Broward County, shall run with the Property in perpetuity, for the sole benefit of the Town of Davie and shall bind all successors and assigns to the title of the Property.

9. Effective Date. This instrument shall become effective and shall be recorded if the above-described rezoning application is approved and made effective by the Town Council with all appeal periods having run without the filing of an appeal.

10. Severability. These restrictions are hereby declared to be severable and independent. If any court of competent jurisdiction shall declare any section, paragraph or part thereof invalid or unenforceable, then such judgment or decree shall have no effect on the enforcement or validity of any other section, paragraph or part hereof, and the same shall remain in full force and effect.

11. Authority. By execution hereof, the signatories on behalf of the Developer acknowledge his/her authority to bind the Developer. Developer acknowledges the validity and binding nature of this Declaration upon each entity and their respective successors and assigns.

12. Captions, Headings and Titles. Articles and paragraph captions, headings and titles inserted throughout this Covenant are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of this Covenant.

13. Context. Whenever the context requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns or pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

14. Construction. This Agreement shall be liberally construed to achieve its intent to limit the uses on the Property as described herein.

IN WITNESS WHEREOF, Developer has executed this Declaration of Restrictive Covenants on the day first above written.

[SEE ACKNOWLEDGMENTS ON NEXT PAGE]

**DEVELOPER**

Witnesses:

LAKESIDE TOWN SHOPS, LTD., a  
Florida limited partnership

By: LAKESIDE TOWN SHOPS, INC.,  
General Partner

\_\_\_\_\_  
Print Name:\_\_\_\_\_

By:\_\_\_\_\_

Title:\_\_\_\_\_

\_\_\_\_\_  
Print Name:\_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_, 2005.

STATE OF FLORIDA       )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State  
aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was  
acknowledged before me by \_\_\_\_\_, who is personally known to me or  
who have produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of  
\_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Typed, printed or stamped name of Notary Public

My Commission Expires:

**DEVELOPER**

Witnesses:

TARGET CORPORATION,  
a Minnesota Corporation

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_, 2005.

STATE OF FLORIDA       )  
                                      ) SS:  
COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by \_\_\_\_\_, who is personally known to me or who have produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Typed, printed or stamped name of Notary Public

My Commission Expires:



**MORTGAGEE**  
**JOINDER AND CONSENT**

Witnesses:

BANK OF AMERICA, N.A., a  
National Banking Association

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_, 2005.

STATE OF FLORIDA       )  
                                  ) SS:  
COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by \_\_\_\_\_, who is personally known to me or who have produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Typed, printed or stamped name of Notary Public

My Commission Expires:

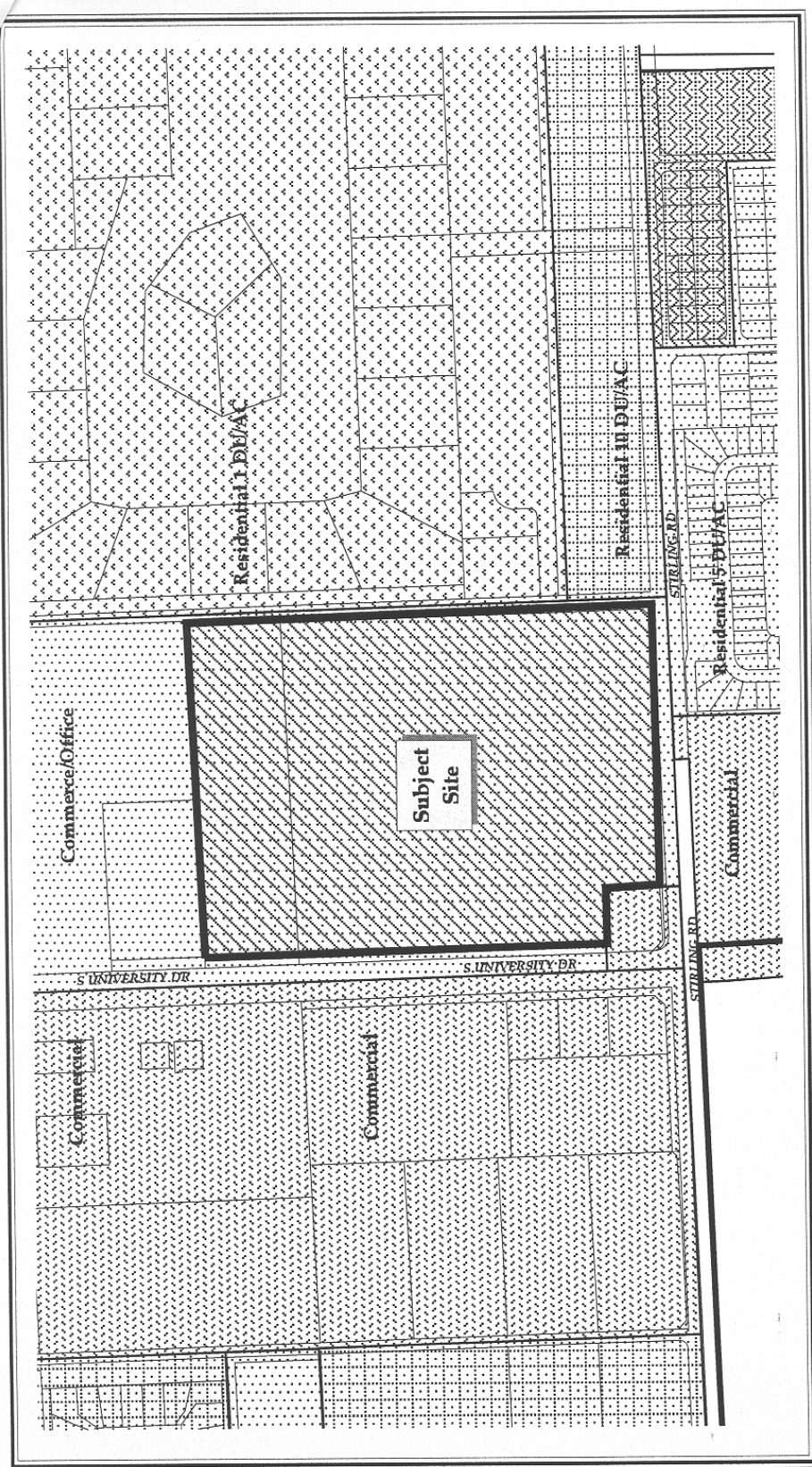
**COMPOSITE EXHIBIT A**

EXHIBIT A-1  
LAKESIDE TOWN SHOPS, LTD.,  
PROPERTY

EXHIBIT A-2  
TARGET CORPORATION  
PROPERTY



# Exhibit 3 - (Future Land Use Map)

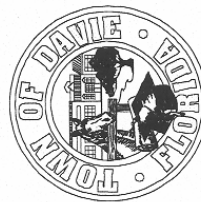


The Town of Davie  
Development Service Department  
Planning & Zoning Division



500 0 500 Feet

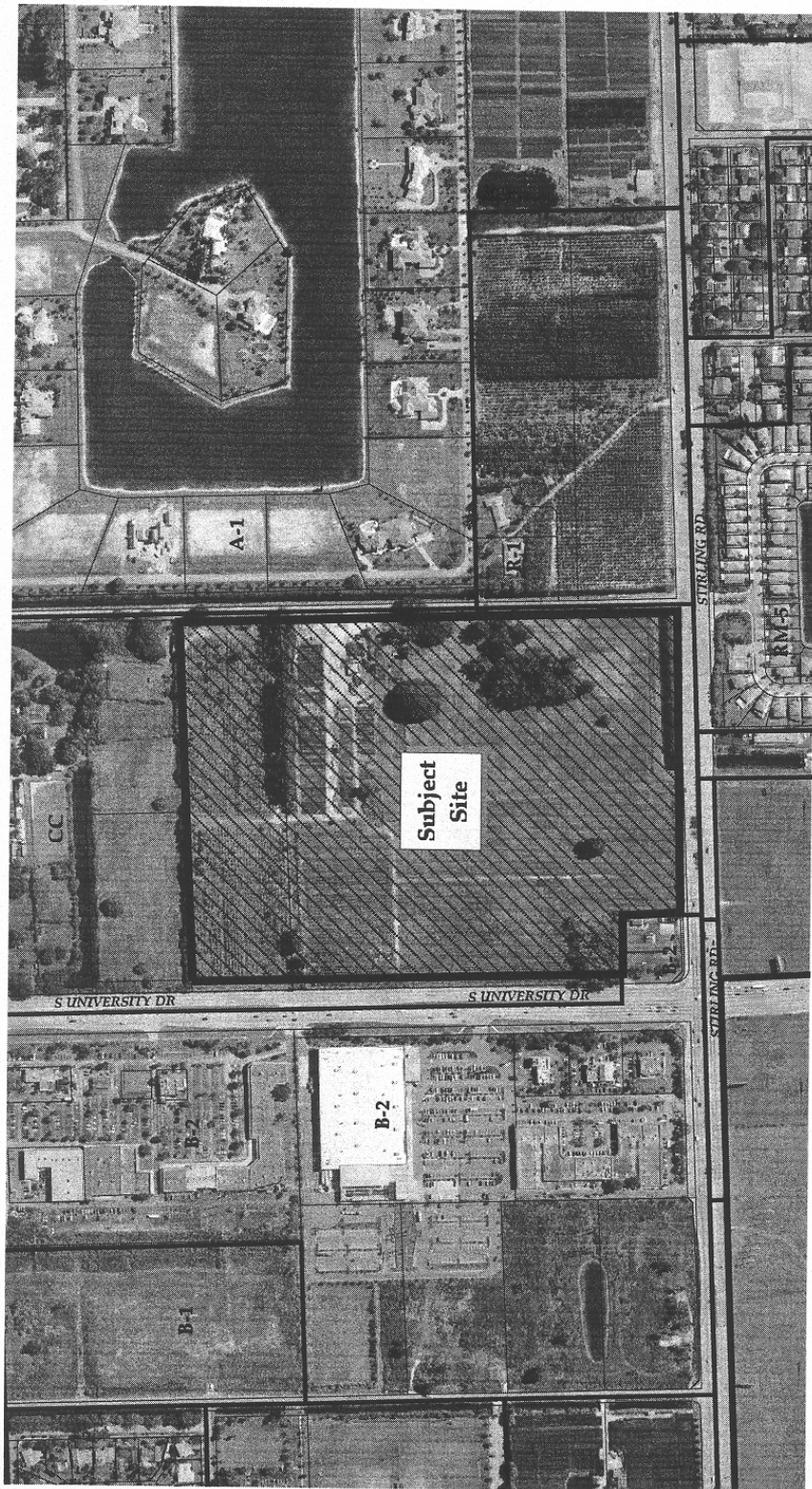
Scale



Developer's Agreement  
DA 5-3-05 / Lakeside Town Shops  
Future Land Use Plan Map

Prepared By: D.M.A.  
Date Prepared: 6-27-05

Exhibit 4 - (Aerial, Zoning, Subject Site Map)



The Town of Davie  
Development Service Department  
Planning & Zoning Division



Developer's Agreement  
DA 5-3-05 / Lakeside Town Shops  
Aerial, Zoning, and Subject Site Map

Prepared By: D.M.A.  
Date Prepared: 6-27-05